

Substitute Bill No. 941

January Session, 2015



AN ACT DELAYING IMPLEMENTATION OF CERTAIN STANDARDS AND SAMPLING REQUIREMENTS UPON THE DETECTION OF POLLUTANTS CAUSING CONTAMINATION OF SOIL, GROUNDWATER OR PUBLIC OR PRIVATE DRINKING WATER WELLS.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

- 1 Section 1. (Effective June 30, 2015) Sections 31 and 32 of public act 13-
- 2 308 shall take effect July 1, 2016.
- 3 Sec. 2. Section 22a-6u of the general statutes, as amended by sections
- 4 31 and 32 of public act 13-308 and section 1 of this act, is repealed and
- 5 the following is substituted in lieu thereof (*Effective July 1, 2016*):
- 6 (a) For the purposes of this section:
- 7 (1) "Commissioner" means the Commissioner of Energy and
- 8 Environmental Protection, or his designee;
- 9 (2) "Mitigation" means actions, including, but not limited to,
- 10 placement of gravel or pavement, fencing, water filtration or such
- 11 other interim measures, taken to control the contamination or
- 12 condition that reasonably prevent exposure, including continuing
- 13 inspection, maintenance or monitoring as necessary for the specific
- 14 measures taken;

- 15 (3) "Parcel" means a piece, tract or lot of land, together with 16 buildings and other improvements situated thereon, a legal description 17 of which piece, parcel, tract or lot is contained in a deed or other 18 instrument of conveyance and which piece, tract or lot is not the 19 subject of an order or consent order of the commissioner which 20 involves requirements for investigation or reporting regarding 21 environmental contamination;
- 22 (4) "Person" means person, as defined in section 22a-2;

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- 23 (5) "Pollution" means pollution, as defined in section 22a-423;
 - (6) "Release" means any discharge, uncontrolled loss, seepage, filtration, leakage, injection, escape, dumping, pumping, pouring, emitting, emptying or disposal of oil or petroleum or chemical liquids or solids, liquid or gaseous products or hazardous wastes;
- 28 (7) "Residential activity" means any activity related to (A) a 29 residence or dwelling, including, but not limited to, a house, 30 apartment, or condominium, or (B) a school, hospital, day care center, 31 playground or outdoor recreational area;
- 32 (8) "Substance" means an element, compound or material which, 33 when added to air, water, soil or sediment, may alter the physical, 34 chemical, biological or other characteristics of such air, water, soil or 35 sediment;
- 36 (9) "Upgradient direction" means in the direction of an increase in 37 hydraulic head; and
- 38 (10) "Technical environmental professional" means an individual, 39 including, but not limited to, an environmental professional licensed 40 pursuant to section 22a-133v, who collects soil, water, vapor or air 41 samples for purposes of investigating and remediating sources of 42 pollution to soil or waters of the state and who may be directly 43 employed by, or retained as a consultant by, a public or private 44 employer.

(b) (1) If a technical environmental professional determines in the course of investigating or remediating pollution after [July 1, 2015] July 1, 2016, which pollution is on or emanating from a parcel, that such pollution is causing or has caused contamination of a public or private drinking water well with: (A) A substance for which the Commissioner Environmental Protection has established Energy and groundwater protection criterion in regulations adopted pursuant to section 22a-133k at a concentration above the groundwater protection criterion for such substance, or (B) the presence of nonaqueous phase liquid, such professional shall notify his or her client and the owner of the parcel, if the owner of the parcel that is the source of such contamination can reasonably be identified, not later than twenty-four hours after determining that the contamination exists. If, seven days after such determination, the owner of the subject parcel has not notified the commissioner, the client of the professional shall notify the commissioner. If the owner notifies the commissioner, the owner shall provide documentation to the client of the professional which verifies that the owner has notified the commissioner.

(2) The owner of a parcel on which exists a source of contamination to soil or waters of the state shall notify the commissioner if such owner becomes aware that such pollution is causing or has caused contamination of a private or public drinking water well with either (A) a substance for which the commissioner has established a groundwater protection criterion in regulations adopted pursuant to section 22a-133k at a concentration at or above the groundwater protection criterion for such substance, or (B) the presence of nonaqueous phase liquid. Notice under this section shall be given to the commissioner verbally, not later than one business day after such person becomes aware that the contamination exists, and in writing, not later than five days after such verbal notice.

(3) Not later than thirty days after the date the owner of such parcel that is the source of the contamination becomes aware of such contamination, such owner shall determine the presence of any other

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water supply wells located within five hundred feet of the polluted well by conducting a receptor survey and such owner shall seek access to sample drinking water supply wells that are located on adjacent parcels of property if such wells are within five hundred feet of the polluted well. If such access is granted, such owner shall sample and analyze the water quality of such wells. Not later than thirty days after becoming aware of such contamination, the owner of such parcel shall submit a report to the commissioner that includes proposals, as necessary, for further action to identify and eliminate exposure to contaminants on an ongoing basis.

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- (c) (1) If a technical environmental professional determines in the course of investigating or remediating pollution after [July 1, 2015] <u>July 1, 2016</u>, which pollution is on or emanating from a parcel, that such pollution is causing or has caused contamination of a public or private drinking water well with: (A) A substance for which the commissioner has established a groundwater protection criterion in regulations adopted pursuant to section 22a-133k at a concentration less than such groundwater protection criterion for such substance; or (B) any other substance resulting from the release which is the subject of the investigation or remediation, such professional shall notify his client and the owner of the parcel, if the owner can reasonably be identified, not later than seven days after determining that the contamination exists.
- (2) The owner of a parcel on which exists a source of pollution to soil or the waters of the state shall notify the commissioner if such owner becomes aware that such pollution is causing or has caused contamination of a private or public drinking water well with: (A) A substance for which the commissioner has established a groundwater protection criterion in regulations adopted pursuant to section 22a-133k at a concentration less than such groundwater protection criterion for such substance; or (B) any other substance which was part of the release which caused such pollution. Notice under this subdivision shall be given in writing not later than thirty days after the time such

person becomes aware that the contamination exists.

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- (3) Not later than thirty days after the date such owner becomes aware that such contamination exists, such owner shall perform confirmatory sampling of the well. Not later than thirty days after the date such owner becomes aware of such contamination pursuant to subdivision (1) of subsection (c) of this section, such owner shall submit a report concerning such confirmatory sampling to the commissioner that includes proposals, as necessary, for any further action to identify and eliminate exposure to contaminants on an ongoing basis. If such confirmatory sampling demonstrates a concentration above the groundwater protection criterion for such substance, such owner shall proceed in accordance with the provisions of subdivisions (2) and (3) of subsection (b) of this section.
- (d) (1) If a technical environmental professional determines in the course of investigating or remediating pollution after [July 1, 2015] July 1, 2016, which pollution is on or emanating from a parcel, that such pollution of soil within two feet of the ground surface contains a substance at a concentration at or above thirty times the industrial/commercial direct exposure criterion for such substance if the parcel is in industrial or commercial use, or at or above fifteen times the industrial/commercial direct exposure criterion for antimony, arsenic, barium, beryllium, cadmium, chromium, copper, cyanide, lead, mercury, nickel, selenium, silver, thallium, vanadium, zinc or polychorinated biphenyls, excluding arsenic or lead from the lawful application of pesticides, if the parcel is in industrial or commercial use and such soil pollution is not more than three hundred feet from any residence, school, park, playground or daycare facility, or at or above fifteen times the residential direct exposure criterion if the parcel is in residential use, which criteria are specified in regulations adopted pursuant to section 22a-133k, such professional shall notify his client and the owner of the parcel, if such owner is reasonably identified, not later than seven days after determining that the contamination exists, except that notice will not be required if

144 either: (A) The land-use of such parcel is not residential activity and 145 the substance is one of the following: Acetone, 2-butanone, 146 chlorobenzene, 1,2-dichlorobenzene, 1,3-dichlorobenzene, dichloroethane, cis-1,2-dichloroethylene, trans-1,2-dichloroethylene, 147 148 ethylbenzene, methyl-tert-butyl-ether, methyl isobutyl ketone, styrene, 149 toluene, 1,1,1-trichloroethane, xylenes, acenaphthylene, anthracene, 150 butyl benzyl phthalate, 2-chlorophenol, di-n-butyl phthalate, di-n-octyl 151 phthalate, 2,4-dichlorophenol, fluoranthene, fluorene, naphthalene, 152 phenanthrene, phenol and pyrene, (B) the substance is total petroleum 153 hydrocarbons, or (C) the substance is antimony, arsenic, barium, 154 beryllium, cadmium, chromium, copper, cyanide, lead, mercury, 155 nickel, selenium, silver, thallium, vanadium, zinc, or polychlorinated biphenyls below thirty times industrial/commercial direct exposure 156 criteria at an area of an industrial/commercial property that is covered 157 158 with pavement that is maintained in a manner that preserves the 159 integrity of such coverage or fenced off from the general public.

(2) The owner of the subject parcel shall notify the commissioner in writing not later than ninety days after the time such owner becomes aware that the contamination exists except that notification will not be required if by the end of said ninety days: (A) The contaminated soil is remediated in accordance with regulations adopted pursuant to section 22a-133k; (B) the contaminated soil is inaccessible soil as that term is defined in regulations adopted pursuant to section 22a-133k; (C) the contaminated soil which exceeds thirty or fifteen times such criterion, as applicable, is treated or disposed of in accordance with all applicable laws and regulations; or (D) the substance is lead on a residential property that is already in a lead abatement program administered by the local health department for the town in which such residential property is located. Any owner who is not required to notify the commissioner pursuant to subparagraph (A), (B) or (C) of this subdivision may voluntarily submit a notification at any time to the commissioner and the department shall issue a certificate of completion for purposes of this section if the area that exceeds fifteen or thirty times such criterion, as applicable, was treated or disposed of

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in accordance with all applicable laws and regulations. The department shall wait until ninety days after the notice is received before determining whether to post a notification received under this subsection on its Internet web site list of notices received under this subsection.

- (3) If notice is not otherwise exempted pursuant to the provisions of subdivision (2) of this subsection, not later than ninety days after the owner becomes aware of such contamination, such owner shall, at a minimum: (A) Evaluate the extent of such contaminated soil that exceeds fifteen or thirty times the applicable direct exposure criteria, as applicable, (B) prevent exposure to such soil, and (C) submit, with the required notification, a report on such evaluation and prevention to the commissioner that includes proposals for other action, as necessary, including, but not limited to, maintenance and monitoring of interim controls to prevent exposure to soil that exceeds fifteen or thirty times, as applicable, the applicable criteria.
- (e) (1) If a technical environmental professional determines in the course of investigating or remediating pollution after [July 1, 2015] <u>July 1, 2016</u>, which pollution is on or emanating from a parcel, that such pollution is causing or has caused groundwater within fifteen feet of an industrial or commercial building to be contaminated with a volatile organic substance at a concentration at or above ten times the industrial/commercial volatilization criterion for groundwater for such substance or, if such contamination is within fifteen feet of a residential building, at a concentration at or above ten times the residential volatilization criterion, which criteria are specified in regulations adopted pursuant to section 22a-133k, such professional shall, not later than seven days after determining that the contamination exists, notify his client and the owner of the subject parcel, if such owner can reasonably be identified.
- (2) The owner of such parcel shall notify the commissioner in writing not later than thirty days after such person becomes aware that the contamination exists except that notification is not required if: (A)

The concentration of such substance in the soil vapor beneath such building is at or below ten times the soil vapor volatilization criterion, appropriate for the land-use for the parcel, for such substance as specified in regulations adopted pursuant to section 22a-133k; (B) the concentration of such substance in groundwater is below ten times a site-specific volatilization criterion for groundwater for such substance calculated in accordance with regulations adopted pursuant to section 22a-133k; (C) groundwater volatilization criterion, appropriate for the land-use of the parcel, for such substance specified in regulations adopted pursuant to section 22a-133k is fifty thousand parts per billion; (D) not later than thirty days after the time such person becomes aware that the contamination exists, an indoor air monitoring program is initiated in accordance with subdivision (3) of this subsection; (E) the parcel contains a building that is not occupied, provided the owner shall submit the required notification not later than the date such building is reoccupied, unless by the date of reoccupancy data confirms concentrations no longer exceed the notification threshold or another exception in this subdivision applies; or (F) the parcel contains a building in an industrial/commercial use and such volatile organic compounds are used in industrial activities, and the use of such volatile organic compounds in such building is regulated by the federal Occupational Safety and Health Administration.

(3) An indoor air quality monitoring program for the purposes of this subsection shall consist of sampling of indoor air once every two months for a duration of not less than one year, sampling of indoor air immediately overlying such contaminated groundwater, and analysis of air samples for any volatile organic substance which exceeded ten times the volatilization criterion as specified in or calculated in accordance with regulations adopted pursuant to section 22a-133k. The owner of the subject parcel shall notify the commissioner if: (A) The concentration in any indoor air sample exceeds ten times the target indoor air concentration, appropriate for the land-use of the parcel, as specified in regulations adopted pursuant to section 22a-133k; or (B)

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- the indoor air monitoring program is not conducted in accordance with this subdivision. Notice shall be given to the commissioner in writing not later than seven days after the time such person becomes aware that such a condition exists.
- (4) Not later than thirty days after the date the owner becomes aware of such contamination, the owner shall submit to the commissioner with the required notification a proposed plan to mitigate exposure to or permanently abate the contamination or condition.
- (f) (1) If a technical environmental professional determines in the course of investigating or remediating pollution after [July 1, 2015] <u>July 1, 2016</u>, which pollution is on or emanating from a parcel, that such pollution is causing or has caused contamination of groundwater which is discharging to surface water and such groundwater is contaminated with: (A) A substance for which an acute aquatic life criterion is listed in appendix D of the most recent water quality standards adopted by the commissioner at a concentration which exceeds ten times (i) such criterion for such substance in said appendix D, or (ii) such criterion for such substance times a site specific dilution factor calculated in accordance with regulations adopted pursuant to section 22a-133k, or (B) a nonaqueous phase liquid, such professional shall notify his client and the owner of such parcel, if such owner can reasonably be identified, not later than seven days after determining that the contamination exists.
- (2) For nonaqueous phase liquid that is not otherwise reported to the commissioner pursuant to the general statutes or regulations of Connecticut state agencies, the owner of such parcel shall notify the commissioner (A) verbally, not later than one business day after such person becomes aware such contamination entered a surface water body, and (B) in writing, not later than thirty days after the date such owner becomes aware of such contamination. For contamination with a substance, as described in subdivision (1) of this subsection, such owner shall notify the commissioner, in writing, not later than thirty

- days after the time such person becomes aware that the contamination exists. Notice shall not be required pursuant to this subdivision if such person knows that the polluted discharge at that concentration or in such physical state was reported to the commissioner, in writing, within the preceding year.
- (3) For any contamination with a substance as described in subdivision (1) of this subsection, not later than the date written notification is due pursuant to this subsection, the owner shall submit with such notification a proposed plan to monitor, abate or mitigate the contamination or condition.
- (g) (1) If a technical environmental professional determines in the course of investigating or remediating pollution after [July 1, 2015] <u>July 1, 2016</u>, which pollution is on or emanating from a parcel, that such pollution is causing or has caused contamination of groundwater within five hundred feet in an upgradient direction or two hundred feet in any direction of a private or public drinking water well which groundwater is contaminated with a substance resulting from a release for which the commissioner has established a groundwater protection criterion in regulations adopted pursuant to section 22a-133k at a concentration at or above the groundwater protection criterion for such substance, such technical environmental professional shall notify his client and the owner of the subject parcel, if such owner can reasonably be identified, not later than seven days after determining that the contamination exists.
- (2) The owner of the subject parcel shall notify the commissioner in writing not later than thirty days after the time such owner becomes aware that the contamination exists.
- (3) Not later than thirty days after the date such owner becomes aware of such contamination, such owner shall determine the presence of any other water supply wells located within five hundred feet of such polluted groundwater by conducting a receptor survey. Such owner shall seek access for the purpose of sampling drinking water

supply wells that are on adjacent properties if such wells are within five hundred feet of such polluted groundwater. If such access is granted, such owner shall sample and analyze the water quality of such wells. Not later than thirty days after the date such owner becomes aware of such polluted groundwater, such owner shall submit with the required notification a report to the commissioner concerning such evaluation that includes proposals, as necessary, for further action to identify and eliminate any exposure to contaminants on an ongoing basis.

- (h) (1) If a technical environmental professional determines in the course of investigating or remediating pollution after October 1, 1998, which pollution is on or emanating from a parcel, that such pollution is causing or has caused polluted vapors emanating from polluted soil, groundwater or free product which vapors are migrating into structures or utility conduits and which vapors pose an explosion hazard, such technical environmental professional shall immediately notify his client and the owner of the subject parcel, if such owner can reasonably be identified, not later than twenty-four hours after determining that the vapor condition exists. If the owner of such parcel fails to notify the commissioner in accordance with this subsection, such client shall notify the commissioner. If the owner notifies the commissioner, the owner shall provide documentation to the client of the professional which verifies that the owner has notified the commissioner.
- (2) The owner of such parcel shall orally notify the commissioner and the local fire department immediately and under all circumstances not later than two hours after the time a technical environmental professional notifies the owner that the vapor condition exists, and shall notify the commissioner in writing not later than five days after such oral notice.
- (i) In the event the commissioner orders the testing of any private drinking well, and such testing indicates that the water exceeds a maximum contaminant level applicable to public water supply

systems for any contaminant listed in the Public Health Code or for any contaminant listed on the state drinking water action level list established pursuant to section 22a-471, the commissioner shall require the respondent to such order to provide written notification of the results of any testing conducted pursuant to such order not later than twenty-four hours after said respondent receives such results to the following: (1) The owner of record of the property upon which any such private drinking well is located, (2) the local director of public health, (3) any person that files a request with the local director of public health to receive such notification, and (4) any other person the commissioner specifically identifies in such order. Not later than twenty-four hours after receiving such notification, such owner shall forward a copy of such notification to at least one tenant of each unit of any leased or rented dwelling unit located on such property and each lessee of such property. Not later than three days after receiving such notification, the local director of public health shall take all reasonable steps to verify that such owner forwarded the notice required pursuant to this subsection.

(j) All notices, oral or written, provided under this section shall include the nature of the contamination or condition, the address of the property where the contamination or condition is located, the location of such contamination or condition, any property known to be affected by such contamination or condition, any steps being taken to abate, remediate or monitor such contamination or condition, and the name and address of the person making such notification. Written notification shall be clearly marked as notification required by this section and shall be either personally delivered to the Remediation Division of the Department of Energy and Environmental Protection or sent by certified mail, return receipt requested, to the Remediation Division of the Department of Energy and Environmental Protection.

(k) (1) The commissioner shall provide written acknowledgment of receipt of a written notice pursuant to this section not later than ten days after receipt of such notice and in such acknowledgement may

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provide any information that the commissioner deems appropriate.

- (2) In accordance with the time frames specified in this section, the owner of the parcel shall submit to the commissioner either (A) (i) a mitigation plan to prevent exposures, (ii) a plan to remediate the contamination or condition, or (iii) a plan to abate the contamination or condition was mitigated and that there are no exposure pathways from the contamination, along with a plan to maintain such mitigation measures, or (C) documentation that describes how the contamination or condition was abated, as applicable. Submittals described in this subsection may be submitted concomitantly with other notices required in this section.
- (3) If such plan, as described in subdivision (2) of this subsection, is not submitted or is disapproved by the commissioner, the commissioner shall prescribe the action to be taken or issue a directive as to action required to mitigate or abate the contamination or condition. If a plan is submitted which details actions to be taken, or a report is submitted which details actions taken, to mitigate or abate the contamination or conditions and such plan or report is acceptable to the commissioner, the commissioner shall approve such plan or report in writing. When a report is submitted that demonstrates permanent abatement of the contamination or condition, such that notice under this section would not be required, the commissioner shall issue a certificate of compliance upon finding such report to be acceptable.
- (l) An owner who has submitted written notice pursuant to this section shall, not later than five days after the commencement of an activity by any person that increases the likelihood of human exposure to known contaminants, including, but not limited to, construction, demolition, significant soil disruption or the installation of utilities, post such notice in a conspicuous place on such property and, in the case of a place of business, in a conspicuous place inside the place of business. An owner who violates this section shall pay a civil penalty of one hundred dollars for each offense. Each violation shall be a

separate and distinct offense and, in the case of a continuing violation, each day's continuance thereof shall be deemed to be a separate and distinct offense. The Attorney General, upon complaint of the commissioner, shall institute an action in the superior court for the judicial district of Hartford to recover such penalty.

- (m) Not later than ten days after receipt of any written notice received under this section, the commissioner shall forward a copy of such notice to the chief elected official of the municipality in which the subject pollution was discovered and to the local health director of such municipality or region. Any forwarding of such notice, as required by this subsection, may be performed by electronic means. The commissioner shall maintain a list of all notices received under this section that pertain to conditions that have not been mitigated or permanently abated at the time of notification. Such list shall be on the department's Internet web site and shall be amended to remove notices after the condition is mitigated or permanently abated.
- (n) Nothing in this section and no action taken by any person pursuant to this section shall affect the commissioner's authority under any other statute or regulation.
- (o) Nothing in this section shall excuse a person from complying with the requirements of any statute or regulation except the commissioner may waive the requirements of the regulations adopted under section 22a-133k if he determines that it is necessary to ensure that timely and appropriate action is taken to mitigate or minimize any of the conditions described in subsections (b) to (h), inclusive, of this section.

This act shall take effect as follows and shall amend the following		
sections:		
Section 1	June 30, 2015	New section
Sec. 2	July 1, 2016	22a-6u

ENV Joint Favorable Subst.

PH Joint Favorable